

FORENSIC EXERCISE A: FORMULATING ARGUMENTS

Instructions

Please read the fact pattern and answer the following questions:

1. What is/are the defense theory/sub-theories?
2. What facts would you want to highlight, as elicited from the witness, to advance your theories?
3. What inferences are supported by the specific facts?
4. What legal principles should you highlight in your closing?

Use the Strategy Chart provided to help brainstorm questions 1-3. Be prepared to give a five-minute closing after discussion.

Fact Pattern:

You represent Mark Mendez at trial. On July 9, Mr. Mendez, a player on the East High baseball team, was arrested and charged with Possession and Intent to Distribute Cocaine. The school colors are black and gold. The School Resource Officer, Officer McHale, will testify that Mark was standing by the bleachers on the baseball field, a site the school staff has been patrolling regularly due to reports of frequent drug sales there. Mark fled the scene. Later, while searching the area, a teacher found a black backpack behind the bleachers with a few small bags containing crack cocaine in them. The bag was in a corner, almost hidden, and also had around \$400. The black backpack had the letters 'MM' written on it with white paint in a graffiti style. The evidence at trial is as follows: The School Resource Officer, Officer McHale, testifies that he has been working at the school for two years, and as a police officer with the local police department for 12 years prior to that, where he became very familiar with drug-related arrests. The teachers at East High had suspected that Mark was heavily involved with drug activities in the high school, and he had been questioned about drug sales prior to this incident, including once by Officer McHale. On the day of the incident, while he was patrolling the area, Officer McHale observed Mark standing by the bleachers talking to a small group of about three or four students. Officer McHale says that he knows it was Mark, because he was wearing a very specific black hooded sweatshirt that he associates with Mark. He saw Mark duck behind the bleachers for about a minute, after which Mark came out and handed a small bag with what appeared to be white powder to another boy. When the other boy saw Officer McHale, he fled, and the officer saw the small bag drop to the ground. Officer McHale reported that Mark started running even though he had ordered Mark to remain where he was. Mark ran off, and the officer retrieved the bag that had been dropped. Later, Officer McHale had Mark called to the principal's office, where Mark, wearing a black hooded sweatshirt, was placed under arrest. A sum of money, \$40

(two \$20 bills), a cell phone and a list of names of other students at East High were found in Mark's coat pocket. Mark did not have a backpack on him. A search of the area around the bleachers revealed the black backpack described, which Officer McHale believed to be Mark's, because he had seen him with a similar backpack with the graffiti art and his initials all over it. The backpack contained textbooks for two classes Mark is currently in, more small bags of white powder, more plastic bags and \$400. The backpack, its contents, the cell phone, the \$40 and the \$400 are all admitted into evidence. According to a chemist's report, the substance in the small plastic bag was cocaine, and each bag had a street value of approximately \$50. The other male involved in the transaction and the other students at the bleachers at that time were never apprehended.

§ 41-29-139 (a) Transfer and possession with intent to transfer. Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

- (1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or
- (2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.